

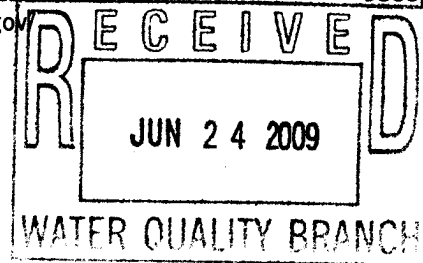


Steven L. Beshear
Governor

TRANSPORTATION CABINET

Frankfort, Kentucky 40622
www.transportation.ky.gov
June 22, 2009

Joseph W. Prather
Secretary



Mr. Jesse Robinson
Kentucky Division of Water
200 Fair Oaks Lane
Frankfort, Kentucky 40601

Subject: **Section 404 Individual Permit (LRL-2006-852-asb) and
Section 401 Water Quality Certification (#2007-0105-1) "Amendment"
Kentucky Highway 61 Realignment Project
Adair County, Kentucky
KYTC Item No: 8-162.10**

Dear Mr. Robinson:

The Kentucky Transportation Cabinet respectfully submits this Section 404 Individual Permit (LRL-2006-852-asb) and Section 401 Water Quality Certification (#2007-0105-1) permit amendment for the currently under construction Kentucky Highway 61 Realignment project in Adair County, Kentucky. The approximately six-mile realignment will require additional linear feet of impact to previously permitted activities due to construction limitations and in-stream sediment control structures. These additional linear feet of impacts pertain to 3 ephemeral streams and 7 intermittent streams. As a result to these additional impacted lengths to previously permitted impacts, we have determined that under the current U.S. Army Corps of Engineers Section 404 guidance, some have exceeded the threshold requirements for mitigation. This will entail the requirement for additional in lieu fee's to be paid for 3 intermittent streams to the Kentucky Department of Fish and Wildlife in-lieu fee fund. Furthermore an incidental temporal loss impact to 1 intermittent stream has occurred due to extreme weather conditions and BMP's not established in timely manner. This impact will also result in funds being deposited into the in-lieu fee program.

The additional length of impacts required to construct the subject project are stated below in their entirety. Upon this evaluation of additional impact lengths as KYTC understands the current Section 404 & 401 guidelines, KYTC will be required to pay the Kentucky Department of Fish and Wildlife in-lieu fee fund program \$13,440 for exceeding mitigation thresholds on intermittent stream 10 located at Station 959+83. KYTC respectfully request that Individual permit number (LRL-2006-852-asb) and Water Quality Certification (#2007-0105-1) be ammended to include these additional lengths.



An Equal Opportunity Employer M/F/D

Stream Name	Station	Length of Impact (feet)	Adjusted Impact Length	Additional Impact Length	Area (acre)	Adjusted Area (acre)	Watershed Size (acres)	Additional Mitigation Required	Quality*	Additional Mitigation Fee
Ephemeral 5	822+00 - 823+50	393	650	257	0.018	0.030	1	No	Poor	
Ephemeral 19	927+50 - 928+50	150	226	76	0.009	0.013	2	No	Poor	
Ephemeral 20	930+00 - 931+50	214	278	64	0.012	0.016	13	No	Poor	
Intermittent 9	913+31	161	196	35	0.015	0.018	131	No	Poor	
Intermittent 10	959+83	335	391	56	0.0990	0.117	97	Yes	Excellent	\$11,200
Intermittent 11	970+50 - 971+00	190	234	44	0.017	0.021	103	No	Poor	
Intermittent 12	979+00	209	242	33	0.038	0.044	104	No	Poor	
Intermittent 13	998+50 - 999+50	137	268	131	0.009	0.018	88	No	Poor	
Intermittent 14	1013+00 - 1014+00	165	190	25	0.019	0.022	163	No	Poor	
Intermittent 15	1027+83	191	264	73	0.035	0.048	112	No	Poor	
								Subtotal:		\$11,200
								20% Temp. Loss		\$2,240
								Total In lieu Fee		\$13,440

As per a secondary site inspection visit that KYTC attended on April 29, 2009, Mr. Larry Parker with the U.S. Army Corps of Engineers brought to our attention that an in-stream sediment control structure has failed due to extreme weather conditions. Mr. Parker informed us that as per poor BMP's in place, along with this failing structure, this in turn has resulted in sediment being lost from the project site and flowing downstream resulting in a temporal impact to 713 linear feet of an intermittent excellent quality stream located at station numbers 831+90 to 838+20. Since Mr. Parkers original site visit, KYTC has instructed the contractors to improve the BMP's on-site by mulching and seeding which was observed by Mr. Parker on the secondary site visit that KYTC attended on April 29, 2009. At the time, due to weather and access to this in stream sediment control structure, it was not possible to repair the structure. KYTC has cleaned out and repaired the in-stream sediment control structures and also added multiple silt fences to this project area to prevent any future sediment loss. At this time KYTC acknowledges the loss of sediment from the site, and after further evaluation, have determined this to be a minor impact to the overall ecological functions of the impacted stream to the ecosystem. Once the in-stream temporary sediment control structures are removed from the impacted stream system, sediment will be capable to transporting throughout the system in it's entirety as a natural stream manner. KYTC proposes this natural stream sediment transport method in the currently impacted sediment area as the best overall method of restoring this streams lowered functioning value. All other alternative methods of onsite mitigation in restoring this stream discussed have resulted in the determination that will only further impact and require the removal of existing onsite mature riparian zones and disturbance to a stable portion of stream. Therefore, all methods would only result in negatively impacting this stream. However, KYTC does acknowledge that we have temporarily impacted this excellent quality stream located at station numbers 831+90 to 838+20 and proposes to help enhance this stream system by the planting of RPM tree's to improve the riparian corridor.

We appreciate you bringing these items to our attention and the opportunity to work with you on this project. Pictures or a site visit will be provided to show the improved BMP's upon request. If you have any questions please contact me by email RoyC.Collins@ky.gov or by phone 502-564-7250.

Sincerely,



Roy Collins
Permit Coordinator



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET

DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
2751 Campbellsville Rd
Columbia, KY 42728
www.kentucky.gov

June 9, 2009

Certified No. 7006 2150 0002 5095 1863
Return Receipt Requested

Transportation Cabinet
Dept of Highways Dist 8
ATT: Mark E. Robertson, PE
Russell County Resident Engineers' Office
P. O. Box 1625
Russell Sprigs, KY 42642

Re: Letter of Warning
AI ID: 102751
AI Name: KY 61 Adair County KYTC
Activity ID: ELW20090002
Permit No. KYU102751
Adair County, KY

Dear Mr. Robertson:

This letter serves as a follow-up to an inspection conducted on April 29, 2009. Representatives from the Transportation Cabinet were present. I am enclosing a copy of the inspection report and photographs for your benefit.

Based on the seriousness of the ongoing violations, the Kentucky Department for Environmental Protection (DEP) has issued the enclosed Letter of Warning for violations discovered at your facility. This is the second Letter of Warning that has been issued for this project. Please review this Letter of Warning carefully to ensure that all remedial measures are completed by the specified deadlines.

As I am sure you are aware continued non-compliance could result in further enforcement actions, including possible penalties. Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 270-384-4734.

Sincerely,

Ms. Sara Sproles,
Environmental Control Supervisor
Division of Water

Enclosure

**COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water**

LETTER OF WARNING

To: KY 61 Adair County KYTC
KY 61 Project
Department of Highways Dist 8
P. O. Box 1625
Russell Springs, KY 42642

AI Name: KY 61 Adair County KYTC **AI ID:** 102751 **Activity ID:** ELW20090002
County: Adair
Enforcement Case ID:
Date(s) Violation(s) Observed: 05/07/2009

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000102751():

The cabinet may certify pursuant to 33 U.S.C. sec. 1341 that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into the waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act. If a person fails to obtain a water quality certification and proceeds with the project, they have violated Section 401, 33 U.S.C. 1341 of the Clean Water Act and KRS 224.16-050(2). [KRS 224.16-050(2)]

Description of Non Compliance:

KYTC did not have a certification for observed impacts

The remedial measure(s), and date(s) to be completed by are as follows:

The Kentucky Transportation Cabinet shall submit a remedial plan which identifies the corrective action which will be taken to address the failure to obtain Water Quality Certification for numerous impacts associated with the Adair County -KY 61 realignment. A revised application for Water Quality Certification must be submitted to the Kentucky Division of Water which identifies all areas impacted by the realignment of KY 61 in Adair County. In particular, each impact must be evaluated to ensure that the impact length is stated in the previous application for Water Quality Certification (received June 20, 2006) is accurate. In addition, areas where a discharge into waters of the Commonwealth has occurred without receiving the appropriate authorization, including those areas impacted as a result of dysfunctional or absent Best Management Practices (BMPs) must be identified in the revised application for Water Quality Certification. The remedial plan must also identify corrective actions for the areas of noncompliance, including mitigations for unauthorized impacts to receiving waters.

This required information shall be submitted to Jesse Robinson, Water Quality Certification Sections Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, KY 40601 by **July 1, 2009**. A copy of shall also be submitted to the Columbia Regional Office Division of Water by **July 1, 2009**

Failure to comply with the remedial measures or repeated violations of this requirement may subject you and or your company to an immediate referral to the Division of Enforcement. [KRS 224.16]

2 Violation Description for Subject Item AIOO0000102751():

The permittee shall comply with all conditions of the permit. Any permit noncompliance shall constitute a violation of KRS 224, among which shall be the following remedies: enforcement action, permit revocation, revocation and reissuance, or modification, or denial of a permit renewal application. [401 KAR 5.065 Section 1(1)(a)]

Description of Non Compliance:

The permittee has failed to adequately perform/implement applicable portions of the BMP plan.

The remedial measure(s), and date(s) to be completed by are as follows:

Immediately take the necessary actions to implement applicable portions of the BMP plan in order to address all conditions in the General KPDES permit. This required information shall be submitted to Jesse Robinson, Water Quality Certification Sections Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, KY 40601 by **July 1, 2009**. A copy of shall also be submitted to the Columbia Regional Office Division of Water by **July 1, 2009**.

Failure to comply with these remedial measures or repeated violations of this requirement may subject you and or your company to an immediate referral to the Division of Enforcement. [401 KAR 5.065 Section 1(1)(a)]

3 Violation Description for Subject Item AIOO0000102751():

Surface waters shall not be aesthetically or otherwise degraded. [401 KAR 10.031 Section 2]

Description of Non Compliance:

The waters of the Commonwealth have been degraded

The remedial measure(s), and date(s) to be completed by are as follows:

Cease all discharges that are aesthetically or otherwise degrading the waters of the Commonwealth. Submit a written plan of action and a schedule of implementation to the undersigned describing the necessary measures taken to address the non-compliances. This required information shall be submitted to Jesse Robinson, Water Quality Certification Sections Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, KY 40601 by **July 1, 2009**. A copy of shall also be submitted to the Columbia Regional Office Division of Water by **July 1, 2009**.

Failure to comply with the remedial measures or repeated violations of this requirement may subject you and or your company to an immediate referral to the Division of Enforcement [401 KAR 10.031 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Columbia Regional Office
2751 Campbellsville Rd
Columbia, KY 42728
Hours (8:00 AM – 4:30 PM)
Ms. Sara Sproles, Environmental Control Supervisor

Issued By:



Ms. Sara Sproles, Environmental Control Supervisor

Date: June 9, 2009

How Delivered: Certified

Certified/Registered # 7006 2150 0002 5095 1863

**Energy and Environment Cabinet
Department for Environmental Protection**

Division of Water
Wastewater Inspection Report

AI ID: 102751 **AI Type:** CONST-Construction Industry (23)
AI Name: KY 61 Adair County KYTC
AI Address: KY 61
City: Columbia, **State:** Kentucky **Zip:** 42728
County: Adair **Regional Office:** Columbia Regional Office
Latitude: **Longitude:**
Site Contact:
Title: **Phone #:**
Inspection Type: WW SW Const NonSamp **Activity #:** 04N20090003
Incident IDs:
Inspection Start Date: May 7, 2009 **Time:** 12:00 AM **End Date:** May 7, 2009 **Time:** 12:00 AM
Site/Permit ID: KYC102751

Lead DEP Investigator: Cindy Brumitt
Other DEP Investigators: Jesse Robinson
External Investigators: Larry Parker
Persons Interviewed: Dave Molen, Roy Collins, Tim Hill, Danny Jasper, Mark Robertson

General Comments: On 05/16/09, a L OW of Warning was issued to KYTC for deficiencies noted on the 04/29/09 inspection with Larry Parker. I assisted KYTC in evaluating the areas of concern the COI noted and on 05/07/09, a 04/29/09 inspection of the Hwy 61 project in Adair county was conducted to determine the discrepancies in the permitted areas of impact with the installation of the culverts on the project. The following parties met with me at the Columbia Regional Office to review plans and permits prior to the inspection: Larry Parker-SCOE, Jesse Robinson-WQB, Dave Molen-KYTC, site superintendent, Mark Robertson-KYTC, Resident Engineer, Danny Jasper-KYTC, Roy Collins-Engineering Technology II, and Tim Hill-Hill Construction. At the time of the inspection the following non-compliance items were discovered:

Based on the evaluations at the CRO and site inspection, KYTC assumed that the easements obtained to be the approved areas of impact and several erosion controls that were not within the COI-WQ permit criteria. Also, erosion controls installed were not adequate to control the run-off of sediments in several areas along the site.

Overall Compliance Status: Out of Comp- L OW

Investigation Results

SI: AIO0102751

SI Description:

Inspector Comment:

Requirement: Has the facility applied for all necessary permits and licenses required by the Division of Water?. [401 KAR 5:060 Section 1(2)(a)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Does the facility hold the proper KPDES permit?. [401 KAR 5:060 Section 12]

Compliance Status: C-No Violations observed

Comment:

Requirement: The cabinet may certify pursuant to 33 U.S.C. sec. 1341 that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into the waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act. If a person fails to obtain a water quality certification and proceeds with the project, they have violated Section 401, 33 U.S.C. 1341 of the Clean Water Act and KRS 224.16-050(2). [KRS 224.16-050(2)]

Compliance Status: O-Out of Comp-LOW non-recurrent Adm. or O&M

Comment: KYTC did not have a certification for observed impacts.

Requirement: Has the facility developed a Best Management Practices (BMP) plan, which includes the required information as specified in A through H of Part IV of the General Stormwater KPDES permit:(A) Site Description/Map(B) Sediment and Erosion Control Measures(C) Other Control Measures(D) Other State and Local plans(E) Maintenance(F) Inspection(G) Non-Stormwater Discharges(H) Contractors and Sub-ContractorsIs a copy of the plan readily available for review?. [401 KAR 5:065 Section 1(1)(a)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Is the permittee adequately implementing all necessary requirements of the BMP plan?. [401 KAR 5:065 Section 1(1)(a)]

Compliance Status: O-Out of Comp-LOW non-recurrent Adm. or O&M

Comment: The permittee has failed to adequately perform/implement applicable portions of the BMP plan.

Requirement: Is the facility in compliance with the reporting requirements for spills, bypasses and other releases to the environment?. [401 KAR 5:015 Section 2]

Compliance Status: C-No Violations observed

Comment:

Requirement: Have pollutants entered the waters of the Commonwealth?. [KRS 224.70-110]

Compliance Status: C-No Violations observed

Comment:

Requirement: Have surface waters been aesthetically or otherwise degraded? [401 KAR 10:031 Section 2]

Compliance Status: O-Out of Comp-LOW non-recurrent Adm. or O&M

Comment: The waters of the Commonwealth have been degraded.

Requirement: Is the permittee complying with all other conditions applicable to the KPDES permit?. [401 KAR 5:065 Section 1(1)(a)]

Compliance Status: C-No Violations observed

Comment:

Documentation

- ☒ Photos taken
- ☐ Documents obtained from facility
- ☐ Samples taken by outside source
- ☐ Request for Submission of Documents

- ☐ Record of visual determination of opacity
- ☐ Samples taken by DEP
- ☐ Regional office instrument readings taken
- ☐ Other documentation

Inspector:

Lynette J. Brumitt

Date: 6/09/09

Received By: _____ **Title:** _____ **Date:** _____

Delivery Method: Certified

Certified Mail Number: 7006 2150 0002 5095 1863